## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NORTHEASTERN DIVISION

| B. A. P., a minor child by and through her | )                                  |
|--|------------------------------------|
| parent, RICHARD PENKOSKI; and              |                                    |
| RICHARD PENKOSKI, as the parent and        | )                                  |
| legal guardian of B. A. P.,                |                                    |
| Plaintiffs,                                | )                                  |
|  | ) Case No. 2:20-cv-65              |
| v.   | ) Chief Judge Waverly Crenshaw Jr. |
|  | ) Magistrate Alistair Newbern      |
| OVERTON COUNTY BOARD OF                    | ) (JURY DEMAND)                    |
| EDUCATION,                                 |                                    |
|  | )                                  |
| Defendant.                                 | )                                  |

## PLAINTIFFS' MOTION REQUESTING JUDICIAL SETTLEMENT CONFERENCE

Plaintiffs, B.A.P., and Richard Penkoski (hereinafter "Plaintiffs"), by and through undersigned counsel, respectfully request this Court enter an Order allowing the parties to conduct a judicial settlement conference, and for good cause show as follows:

- In the early stages of the case, the parties made good faith efforts to resolve this
  matter. Counsel have had telephonic conferences about what the parties are/are not
  willing to accept/give.
- 2. The pleadings have been joined and Plaintiffs are evaluating amendment prior to the deadline on March 31, 2021. Written discovery has been exchanged that is sufficient to evaluate and discuss settlement substantively.
- 3. During a subsequent conference between counsel today, the possibility of seeking a resolution by judicial settlement conference was proposed in order to mitigate litigation. The parties have distinct factual disagreements. However, the application of

legal principles is not so dissimilar that it would prevent compromise.

- 4. A judicial settlement conference is necessary because the intersection of the disputed facts combined with the near agreement on legal principles requires an appreciation of judicial analysis to focus the respective parties' interests/expectations. Contrasting this case with others is the complexity of how a factual distinction/disagreement discussed during a mediation session would translate into projected outcomes under various complexities in precedent given the focus of this case is a school setting. These cases require a mediation officer very cognizant of these fine distinctions particularly having had exposure to constitutional questions. Most private mediators will not have this experience.
- 5. The alternative to seeking this early resolution is time-consuming and expensive discovery vehicles and intensive motion practice. In the interests of judicial economy, seeking agreement at this stage is better than to wait until after protracted litigation.
- 6. Magistrate Judge Brown is understood to be available for judicial settlement conferences.
- 7. To aid in restricting litigation time and expense, it is respectfully requested that the pending deadline for amending pleadings be extended until after the mediation date.
- 8. During the conference with counsel today, defendant's counsel represented he would submit a prompt position on this motion -- before March 30, 2021.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order allowing the parties to conduct a judicial settlement conference, and for any other relief this Court finds is equitable and just.

## Respectfully submitted,

/s/Frederick H. Nelson Frederick H. Nelson Florida Bar No. 0990523 **American Liberties Institute** P. O. Box 547503 Orlando, FL 32854-7503 Phone: (407) 786-7007

Fax: (877) 786-3573 Email: rick@ali-usa.org Counsel for Plaintiffs (Admitted *Pro Hac Vice*)

## **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been forwarded via the court's ECF/CM system to:

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Counsel for Defendant

on this the 29th day of March, 2021.

/s/Frederick H. Nelson Frederick H. Nelson Florida Bar No. 0990523 **American Liberties Institute** P. O. Box 547503 Orlando, FL 32854-7503 Phone: (407) 786-7007

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